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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1317th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth and thirteenth periodic reports of Peru

1. At the invitation of the Chairman, Ms. Valenzuela de Puelles, Mr. Voto-Bernales, Mr. Armas Bengleri, Mr. Diaz Campos, Mr. Rodriguez, Ms. Vizcarra Alvizuri, Mr. Chavez and Mr. Figueroa Navarro (Peru) took places at the Committee table.

2. Ms. VALENZUELA DE PUELLES (Peru) said that her Government was committed to working for the full enjoyment of human rights, both civil and political and economic, social and cultural. In that context, Peru wished to meet all its obligations under the Convention and continue its ongoing dialogue with the Committee.

3. In the aftermath of the wave of terrorist violence of the 1980s, a series of reforms had been implemented to deal with the worst social, political and economic crisis in Peru's history, and a process of structural reactivation and rebuilding had been under way since the beginning of the 1990s. Outlining the Government's integrated development and poverty alleviation policies and assistance to vulnerable groups, such as displaced persons, she said that one of its priorities was the protection and promotion of human rights and the adoption of concrete measures to eradicate and punish the discriminatory practices that still existed in Peru and prevent their resurgence. The crimes of genocide, forced disappearance and torture had been incorporated into criminal law.

4. Under the Constitution, everyone had the right to equality before the law, and no discrimination on any grounds, including those of origin, race or language, was prohibited. The Constitution also established the principle of complete equality of opportunity in all labour relations.

5. It would be unrealistic to deny that discrimination existed in Peru, as it did in nearly every country. However, discrimination was a product of misconceptions and misguided cultural beliefs, in which education played a fundamental role. For that reason, the Government was implementing a comprehensive, permanent education programme, that aimed to combat all forms of discrimination by promoting equality among different socio-cultural groups, thereby strengthening national unity while respecting diversity. School syllabuses covered multiculturality and human rights, encouraging the recognition and affirmation of Peru's ethnic, cultural and linguistic variety and the understanding and upholding of human rights. The curriculum at all levels of education developed a wide range of psycho-social skills, so that, by the end of sixth grade, at around the age of 11, children would accept people's differences and recognize them as legitimate. Education thus contributed to the gradual overcoming of all forms of discrimination, as part of an overall policy to combat poverty and improve the quality of life for all.

6. Recent legislation punished employers, contractors, training institutes and employment agencies, inter alia, who imposed requirements for employment or training courses that were discriminatory or impaired equality of opportunities or treatment. The law did not cover justifiable discrimination based on a person's qualifications for the job or training course. Efforts to eliminate discrimination in employment were also being made in specific sectors. The Ministry of Transport, Communications, Housing and Construction, for example, had recently introduced guidelines designed to develop human potential, one of the purposes being to discourage employees from practising any kind of racial, political or religious discrimination in the performance of their duties.

7. Peru's indigenous peoples accounted for a significant proportion of its population, and were an important component of its multicultural, multi-ethnic society. Everyone had a constitutional right to an ethnic and cultural identity, and Peru's rural and indigenous communities were recognized legal entities. The Constitution also provided for the delegation of jurisdiction to traditional authorities, in accordance with customary law, on condition that the fundamental rights of persons should not be violated. The aim of such provisions was to combat discrimination in the areas of human rights and the administration of justice; one way in which that was done was to provide for special treatment for those who committed a punishable act but who, because of their culture or customs, did not realize that it was an offence. Such persons were not held responsible or were given a reduced sentence, according to the penal regulations.

8. One of the main priorities of the Office of the Ombudsman had always been the protection of the indigenous peoples and communities of Amazonia, and of their rights to land, cultural diversity, development, equality and full participation as citizens. The Office of the Ombudsman ran a programme to facilitate communication with indigenous organizations in different parts of the jungle regions. It also dealt with complaints from members of those communities who considered that their rights had been violated.

9. In the previous year, the Ministry of Justice, through the National Council for Human Rights, had carried out training and support activities in remote communities in the north-east of Peru. One important project had involved training community leaders in extrajudicial conciliation, so that group or community conflicts could be resolved peacefully.

10. As mentioned in the periodic report, one of the most important achievements on the part of the State had been the issue of titles to land and, by late 1998, the Land Title Commission (Comisión de formalización de la propiedad informal - COFOPRI) had issued approximately 250,000 registered land titles. Such title brought numerous benefits, inter alia, allowing the new owners to leave property to their heirs and removing a cause of property disputes.

11. Peru had recently enacted legislation to promote investment in Amazonia, linking State and private investment in road, port, airport, tourism, energy, forestry and aquaculture development projects, in accordance with current legislation and with due respect for the rights of rural and indigenous communities. The State was also playing an important part in promoting access

to health, education, nutrition and justice through socio-economic development projects that would reinforce the ethnic and cultural identity of those communities, improve their integration with the rest of the population and eliminate the kind of situations or material conditions that were conducive to discrimination against such groups.

12. Because a number of cases had recently come to light of people being refused entrance to public establishments on grounds that conflicted with the Constitution, specific legislation had been enacted to establish consumers' right to protection of their economic interests through equitable and fair treatment in all commercial transactions, which meant that no user or consumer could be discriminated against on any grounds, including those of race or language.

13. The principle of equality was also observed in the prison system, where any categorization of prisoners had to be based on objective criteria such as the type of offence or the level of risk presented by an inmate. All prisoners without distinction would eventually be eligible for the vocational programmes and activities that were gradually being provided under the prison rebuilding programme.

14. With regard to article 4 of the Convention, a public debate was currently being conducted in Peru on the classification of certain forms of discrimination as offences. Preliminary draft legislation was before Congress to define discrimination along the lines of article 1 of the Convention. The legislation would punish incitement to, or acts of, discrimination and prohibit the establishment or support of organizations promoting discrimination. It would also address discrimination in employment i.e., preventing or hindering the hiring of a person, imposing unequal working conditions or denying a public service - and discrimination by public servants. Another bill, would make it an offence to order or execute actions that gave rise to any form of racial discrimination or to behave in such a way as to exclude persons, on racial grounds, from access to employment, public or private services or educational establishments, or to prevent them from entering public places. The proposed penalty was not less than three months' and not more than two years' imprisonment. A related offence would be consumer discrimination, for which the penalty suggested was 30 to 60 days' community service or a fine equivalent to 180 to 365 days' earnings.

15. Lastly, two proposals for draft legislation, based on the model legislation recommended by the Committee, punished the offences of incitement to racial hatred or discrimination and the prevention or impairment of the recognition, enjoyment or exercise of rights on racial grounds. Congress would shortly be selecting one of the two bills for enactment.

16. Peru's work in combating racial discrimination was not yet complete. International cooperation would be needed to help her country to implement its development projects to enable all sectors of the population to benefit equally from them. The profound changes in Peru in recent years and consistent efforts by the Government had strengthened Peru's cooperation with the United Nations human rights treaty bodies. Its commitment was demonstrated by the setting up, with UNESCO's assistance, of the Ministry of Justice's National Council for Human Rights and the integral training

programme in human rights for marginalized women designed to help build and strengthen a culture of peace in Peru, as one strategy in the fight against the abject poverty in which so many Peruvian families lived. Her delegation looked forward to a fruitful and constructive dialogue with the Committee.

17. Mr. de GOUTTES (Country Rapporteur) thanked the Government of Peru for its regular dialogue with the Committee and for sending a high-level delegation, led by the Minister of Justice whom he thanked for her interesting overview of the situation in Peru and of new developments in legislation. He noted the distribution of the Universal Declaration of Human Rights translated into 34 indigenous languages, a great achievement.

18. As stated in paragraph 77 of the core document (HRI/CORE/1/Add.43/Rev.1), Peru had been moulded by thousands of years of pre-Colombian development and 500 years of western culture; the Constitution accordingly defined Peru as a multi-ethnic and multicultural country. Surely no better summary could be made of the uniqueness and spirit of the Peruvian nation, which included indigenous and peasant communities with their own legal status and cultural identity.

19. Referring back to the principal concerns expressed by the Committee during its examination of the eleventh periodic report of Peru in 1995, he noted that Peru had only partially responded to those observations and recommendations. His own observations were based on United Nations documents and non-governmental organization (NGO) sources, particularly the Asociación pro Derechos Humanos (APRODEH), a member of the International Federation of Human Rights (FIDH) and the National Human Rights Coordination (Coordinadora nacional de derechos humanos) (CNDPH), a federation of some 50 human rights associations. Reading the Government report and the counter-reports by the NGOs, he had concluded that there had not been sufficient contact and exchange of views at a national level between government authorities and NGOs and that the Committee might recommend that they work more closely together and establish a genuine dialogue in the preparation of periodic reports.

20. As a preliminary comment, he said that the "general" section of the report was too brief, given that the core document dated from 1995. Although information was provided subsequently on the legal status of peasant and indigenous communities and recent changes, on protection of their territory and ethnic and cultural identity, and on education programmes and other measures undertaken on their behalf by various bodies, much information vital to a better understanding of the situation in Peru was lacking. More precise details on the demographic composition of the population were required, notably in view of the 1993 census finding that there were 42 ethno-linguistic groups in Peruvian Amazonia. The Committee was, moreover, not satisfied with the explanation that, since all reference to race had been removed from censuses, it was impossible to report on the ethnic structure of the population and to indicate the percentage of the population who were black, of Asian origin, of mixed race or white.

21. It would have been useful to receive more information on recent changes in the political, economic and social situation of Peru, particularly the effect that the Government's anti-terrorist campaign, the growing influence of the armed forces, the deterioration of public services and an ultra-liberal

economic policy had had on the poorest members of the population, particularly peasant and indigenous communities, and to what extent social inequality was worsening. The Committee on Economic, Social and Cultural Rights in its May 1997 report (E/C.12/1/Add.14), had considered that the failure to address the persistent and serious problems of poverty, the gross inequality in the distribution of wealth among the population, the failure to implement agrarian reforms, the lack of and drastic reduction of public expenditures on health services, the impoverishment of State schools, teachers and families, and the acute forms of discrimination that particularly afflicted women, indigenous people and other minority groups were among the greatest obstacles to the fulfilment of economic, social and cultural rights. Those observations, though dating back two years, bore witness to the complex situation of many Latin American countries, namely the close interrelation between socio-economic underdevelopment and ethnic or racial discrimination, principally against indigenous and rural communities and the black minority. He pointed out that social marginalization suffered by indigenous populations also came within the Committee's mandate, since racial discrimination within the meaning of the Convention was not only institutionalized discrimination, but any discrimination manifested by policies or practices perpetuating the marginalization and impoverishment of certain ethnic groups. He referred the delegation to the Committee's general recommendation of 18 August 1997 on the rights of indigenous peoples.

22. The Committee therefore sought more information in the next report on the main socio-economic indicators of non-integration, such as the percentages of peasants and indigenous and black persons affected by unemployment, disease, early death, suicide, drug addiction or alcoholism, delinquency, prostitution and illiteracy, in order to measure the degree of exclusion or marginalization suffered by certain social groups.

23. Regarding the implementation of article 2 of the Convention, the information given in paragraph 17 of the report was too general and too legal, with no information on how effectively the laws were applied in practice and what difficulties were encountered in their application. A similar observation had been made by the Committee on the eleventh report.

24. Up-to-date information was needed on a number of points. Firstly, what changes had the Constitution of 1993 made to the status of the Convention and other international treaties in the hierarchy of national laws? According to the APRODEH report, international treaties had been downgraded from constitutional status to the status of ordinary laws. That observation had been corroborated by the conclusions of the Human Rights Committee in its concluding observations on Peru in 1996 (CCPR/C/79/Add.72). The Committee also wished to receive information on the effective and practical application of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified in 1994, and on draft amendments to the Constitution. Although the Human Rights Committee had recognized in 1996 that the State party had the right to adopt vigorous measures to protect its population against terrorism, insofar as such measures did not violate the rights protected by the Covenant, the Committee against Torture, in its conclusions of January 1999, had deemed emergency legislation hardly conducive to respect for human rights; information was sought on its continuation.

25. Could the delegation shed light on the laws passed between 1995 and 1998, notably Acts Nos. 26546, 26623, 26695 and 26933, on the administration of justice, which according to the Committee against Torture, reporting in January 1999, arguably seemed designed as a renewed challenge to the independence of the judiciary, whereas as the judiciary ought to be the guarantor of rights for all, particularly the most underprivileged rural and indigenous populations.

26. The Committee needed more information on the role of the Office of the Ombudsman (Défensoría del Pueblo) in ensuring protection against all forms of racial and ethnic discrimination. It would also welcome further explanations on the administration of justice by indigenous communities. When the previous report had been considered, the delegation had referred to judicial functions exercised by the authorities of indigenous communities within their territorial ambit in conformity with customary law, and to the settlement of disputes by respected members of the community. Could the delegation explain how that particularly original and interesting form of community justice functioned effectively and whether it gave good results?

27. On article 4 of the Convention, the Committee's previous observation that there was very little information on its implementation and that the provisions of certain articles of the Penal Code were not fully in conformity with the requirements of the Convention was still valid. The information contained in paragraphs 23 to 26 of the thirteenth report did not enable the Committee to gauge whether all the requirements of article 4 of the Convention were met. With regard to the Penal Code in particular, both article 129 and article 317 fell short of the requirements of article 4, which required specific laws to criminalize and punish the dissemination of racist ideas, incitement to racial discrimination, acts of violence or incitement thereto, financing of racist activities and participation in racist organizations. The Committee had always insisted on compliance with article 4, in the conviction that the existence of special legislation against racism also served a preventive and pedagogic function, with penal law upholding the values of tolerance and inter-ethnic and inter-racial understanding which society wished to affirm and safeguard. Some follow-up information would be needed on the bills referred to in the introductory statement concerning the illegality of dissemination of racist propaganda and participation in racist organizations, racial discrimination at work and in public or private bodies, and incitement to racial hatred. He noted, however, that according to the CNDH and APRODEH reports, two bills presented to Congress at the end of 1998 aimed at criminalizing racial discrimination, particularly regarding access to public places, had been rejected by the Parliamentary majority, which had invoked freedom of opinion and the risk of precipitating an influx of foreigners. Could the delegation confirm that information?

28. With regard to article 5 of the Convention, paragraphs 32 to 49 of the report dealt with subjects of direct interest to the Committee, particularly the indigenous communities' right to property ownership and the right to housing, on which the Committee had requested more information in 1995. Although the report acknowledged the inadequacies in areas such as housing and health and the underprivileged situation of peasant and indigenous communities, it was short on specific information about the actual, often dramatic, conditions in which rural, peasant and indigenous communities lived.

29. With regard to equal treatment before the tribunals, CNDH and APRODEH considered that the right was only a formal one for the monolingual indigenou populations (those speaking Quechua, Aymara and Amazonian languages) since in practice they did not have access to interpreters to argue their claims or defend them. Moreover, the legal texts were not translated into indigenous languages, and many indigenous persons in prisons were unaware of the crimes with which they had been charged. Prejudices and stereotypes were said to be rife among judges and civil servants, sometimes leading to discriminatory decisions. Legal proceedings for complicity in terrorism and treason were also reported to be unjustly instituted against populations who were terrorized and prey to threats and pressures. Worrying information had been given on prison conditions by the Human Rights Committee in its 1996 concluding observations, namely that in Peru socio-economic criteria wer used to group convicted and unconvicted prisoners. FIDH also referred to the often inhuman conditions in which prisoners were incarcerated, particularly i the Yanamayo prison.

30. Regarding article 5 (b), he drew attention to the Committee's concerns in 1995 about alleged abuses committed as part of the anti-terrorist drive by soldiers and armed groups against rural and indigenous populations, and about the growing participation of peasant committees, rondas campesinas and civil defence groups in criminal activities. It had deplored the impunity which th perpetrators of human rights abuses and violations often enjoyed. Both the CNDH and APRODEH reported continuing human rights violations, affecting mainly the indigenous population; impunity and even amnesty for members of th armed forces; communities having to set up armed self-defence committees whic were assisted by the military and on occasion called upon to settle disputes between peasants about land ownership; and forced army enrolment of young people from the poorest population groups, who were sometimes ill-treated, th Ombudsman apparently having had to conduct an investigation into the matter.

31. In respect of political rights, the CNDH report noted that indigenous persons, who were often without legal documents and illiterate, were de facto unable to enjoy all their political rights. On the question of the political representation of indigenous peoples, already raised in the Committee in 1995 during the consideration of the eleventh report of Peru, had any progress bee made in improving their representation in Congress and the civil service?

32. As to the right to work, the CNDH and APRODEH reports had alleged that access to employment was greatly influenced by racial or ethnic criteria, the employment of whites often being considered by certain employers to be a guarantee of seriousness and effectiveness, notably in the banking sector, advertising, the media and some restaurant chains, whereas menial jobs were left to persons of African or indigenous origin. It would be useful for the Peruvian delegation to explain how Act No. 26772 of 1997 prohibiting discrimination in job offers was implemented in practice. Had it helped prevent racial discrimination on the labour market and promote the hiring of indigenous persons?

33. Concerning the right to housing, paragraphs 33 to 41 provided interesting information on the Government's promotion of the construction of dwellings for low-income residents under the aegis of the National Housing Fund (FONAVI). In its report of 1997, however, the Committee on Economic,

Social and Cultural Rights had expressed concern about the destruction of the habitat and traditional lifestyles and the large number of forced evictions from the Amazon Basin.

34. Regarding the right to medical care and social services, although paragraph 47 of the report listed a number of encouraging developments, in its 1997 report the Committee on Economic, Social and Cultural Rights had expressed concern at the lack of medical services and the sharp drop in public spending on health care. The 1999 CNDH report and APRODEH pointed out that the state of health of indigenous persons was much more serious than that of the rest of the population, the difference in life expectancy being nearly 20 years, and that access to health services and their quality was particularly critical for the population in the Andean and Amazon regions, the costs of medical care being unaffordable by those living in poverty. Those NGOs also criticized the lack of prenatal assistance in rural areas and referred to alleged contraception abuses and a number of cases of forced sterilizations of indigenous women in Andean communities.

35. As to the right of access to public places, the CNDH and APRODEH reports cited discriminatory practices by restaurants, hotels, cafés and nightclubs towards persons of Andean origin. The Peruvian delegation had frankly admitted that such practices existed. At the end of 1998 Act No. 27049 had been promulgated prohibiting owners of businesses open to the public from choosing their customers on the basis of racial criteria, but CNDH reported that Congress had refused to punish such practices. Could the Peruvian delegation provide explanations on the effective application of the Act?

36. On the right to own property, information had been provided on the peasant and indigenous communities' imprescriptible right to own land and on the issuing of title deeds, but he recalled the Committee's previous observation that there was a contradiction between the indigenous communities' right to own land and the rights of the State, which owned the natural resources and determined the country's policy on preserving environmental diversity. The 1999 report of APRODEH noted that the 1993 Constitution had watered down one of the most important rights of indigenous persons recognized under the former Constitution, recognizing only the imprescriptible nature of community property, and not that it was inalienable or unavailable for use. That meant that community property could be declared abandoned and thus considered an economic assets, leaving indigenous and peasant communities vulnerable in facing the pressure exerted by big mining and petroleum companies, whose activities might lead to major environmental damage. Any private investment in forestry and mining in the Amazon Basin in order to develop the region must be subject to respect for the rights of the indigenous population.

37. Turning to implementation of article 6 of the Convention, he commended Peru for having made the declaration under article 14, but paragraphs 50 to 65 of the report did not allow an assessment to be made of the effectiveness of the domestic remedies open to victims of racial and ethnic discrimination. The report should have provided basic judicial statistics, as the Committee had previously requested, giving examples of complaints, prosecution and punishment for racist acts, and of compensation awarded to victims. Further

information would also be welcome on the investigation of complaints by indigenous communities under the special programme referred to in paragraph 67 of the report.

38. Regarding article 7 of the Convention, he noted with satisfaction the interesting information in paragraphs 68 to 86 on the educational system applicable to peasant and indigenous communities and on the protection of their ethnic and cultural identity. Could the Peruvian delegation specify what the "other aboriginal languages" referred to in paragraph 84 were, given that, according to the 1995 core document, Peru had between 64 and 67 ethno-linguistic groups?

39. He asked the Peruvian delegation what measures had been taken to publicize the country's periodic report and the Committee's concluding observations. What had been done to teach law enforcement officers, including the police, prison staff and judges, about human rights and principles of inter-ethnic and racial tolerance and understanding?

40. Mr. VALENCIA RODRIGUEZ, welcoming the demographic statistics in the report, said that of the 80.3 per cent of the population reported as having Spanish as their mother tongue (para. 5), many were probably indigenous persons who were reluctant to admit that they had a different mother tongue or who, for reasons of social integration, also spoke Spanish. In any case, peasant and indigenous groups in Peru made up a considerable percentage of the population.

41. With regard to the implementation of article 2 of the Convention, information was needed on how the various legislative provisions ensuring respect for the principle of equality before the law were implemented in practice. He also asked whether the Ombudsman had ever instituted proceedings to investigate acts of racial discrimination.

42. Peru's ratification of ILO Convention No. 169, its support for Agenda 21 and its participation in the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean demonstrated its firm commitment to complying with article 2.2 of the Convention in defending the country's indigenous and peasant groups. He called upon Peru to continue to inform the Committee about its efforts in that area.

43. Turning to article 4, he said that more relevant data was needed on the actual implementation of its provisions requiring all dissemination of racist ideas and the establishment of organizations which pursued those objectives to be declared punishable offences. The Committee looked forward to learning whether the draft legislation to which the Peruvian Minister of Justice had referred, including the bill on incitement to hatred and defamation and the addition of a new article 151 (a) to the Criminal Code, had been passed.

44. On the implementation on article 5, he sought more information on how the right to remove or dismiss authorities and demand an account of their actions (para. 30) was carried out in practice. Could the delegation provide further details on how the right to housing was promoted for rural and indigenous communities and whether any projects were planned? Referring to

the figures on school enrolment (para. 46), he inquired what percentage of peasant and indigenous children, including black groups, attended school.

45. Concerning implementation of article 6, he was pleased to learn that even a declaration of a state of emergency did not entail suspension of such human rights as habeas corpus. However, the Committee would like to know what legal, administrative and other remedies were open to the victims of racial discrimination and whether examples could be provided of cases brought to court.

46. Paragraph 62 reported on cases involving punishment of officers and non-commissioned officers in the security forces, but, as he understood it, that had nothing to do with racial discrimination, but with action taken to combat subversion. He likewise asked how the special programme referred to in paragraph 67 was implemented in connection with investigating and resolving complaints of violations of the rights of indigenous communities.

47. Regarding article 7, he was pleased with the efforts made to promote education for indigenous persons (paras. 71 and 72), but asked for clarification of the statement in paragraph 73 that no changes in national laws or current programmes had yet been drawn up or adopted in accordance with those commitments. He, too, wished to know what efforts had been made to publicize the Convention, Peru's periodic reports and the Committee's concluding observations.

48. Finally, he sought clarification of the special procedure for refugees who remained at the place to which they were assigned until the State of origin withdrew its demand for their return (para. 82).

49. Mr. GARVALOV noted that the thirteenth periodic report did not contain detailed information on the ethnic composition of the population. Although paragraph 5 said that all references to the racial makeup of the population had been dropped from the census, it mentioned "blacks", population "of Asian origin", "mixed race" and "white", with relevant percentages given for those four categories. Pursuant to article 2 (19) of the Constitution, the State recognized and protected the ethnic and cultural diversity of the nation. Why, then, had it not been possible to provide demographic information on all the ethnic groups in Peru, particularly in view of what was stated in paragraph 7 of the report?

50. The World Directory of Minorities 1997 listed the Highland Quechua as making up more than one third of Peru's total population. That group had been among those hardest hit by the Sendero Luminoso, who had destroyed many villages and executed large numbers of Quechua for collaborating with government forces or failing to embrace Senderista ideology. Thousands had been forced to flee to the shantytowns of Lima and Ayacucho. Ashaninka, members of the Arawak language group, inhabited the Peruvian Amazon rain forests and they, too, had suffered at the hands of the Sendero Luminoso. Amazonian Aguarana and Huambissa had formed organizations to protest against the invasion of their territories by oil companies and had demanded that the Peruvian Government recognize their territorial rights. Additional

information on all those indigenous peoples and their situation would be appreciated, as well as on Afro-Peruvians, who had apparently begun a concerted effort to reaffirm their culture.

51. He commended Peru for frankly acknowledging mistakes in its policies with respect to the indigenous populations. One could only sympathize with Peru in its efforts to fight terrorism on its territory.

52. Although the Constitution prohibited discrimination on various grounds, it did not explicitly contain the terms "colour" or "national or ethnic origin" used in the definition of article 1 of the Convention. He was pleased to learn from the delegation that a bill was being discussed to bring Peru's definition of discrimination more into line with that contained in the Convention. The Habeas Corpus and Amparo Act, the Single Uniform Text of the Code of Civil Procedure and the Code of Penal Execution referred to in the report all omitted the term "national or ethnic origin", whereas article 129 of the Criminal Code expressly prescribed punishment for "anyone who, with the intention of wholly or partially destroying a national, ethnic, social or religious group ...". Could the delegation explain the discrepancy?

53. He was not convinced by the argument used in paragraph 26 of the report to justify the replacement of the word "racial" in article 2 of the Convention by "social" in article 129 of the Criminal Code and the deletion of the word "intentional".

54. Article 317 of the Criminal Code did not explicitly prohibit racist organizations as required by article 4 of the Convention. It was unclear from the wording that the punishable offences mentioned in the first sentence were of a racist nature.

55. Turning to article 7 of the Convention, he commended the State party on the steps it had taken to provide education to indigenous communities and to protect ethnic and cultural identity. The use of education as a weapon in combating racial discrimination was in line with the objectives of the joint study on article 7 undertaken by members of the Committee and of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

56. Mr. BANTON said that much remained to be done in Peru to ensure full implementation of the Convention. In particular, judges should be fully aware of the law on discrimination and the obligations that their country had assumed in that regard.

57. Referring to the right of free access to public places or services safeguarded by article 5 (f) of the Convention, he drew attention to an APRODEH report which referred to the defence arguments of a company faced with discrimination proceedings. The company had referred to a sign stating that the enterprise reserved the right of admission and had made misleading references to free enterprise. In his view, discrimination against a group was contrary to free enterprise and amounted to the exercise of monopoly power. The fact that the burden of proof in such cases fell on the complainant was inconsistent with Peru's obligations under the Convention. If a complainant established a prima facie case and demonstrated that its complaint was neither frivolous nor vexatious, some of the burden of proof

must be assumed by the other party. The court in the case mentioned by APRODEH had referred in its judgement to the supremacy of free enterprise and defined discrimination as an "identifiable separation policy" for the purpose of marginalization, ignoring the Convention definition which referred to any act which had "the purpose or effect" of discriminating. An act could be indirectly discriminatory without any intention on the part of the person who was the object of the complaint. The definition in the court judgement stated that a discriminatory policy affecting all members of a social sector had to be identified, but the Convention merely required evidence of inequality of treatment and made no reference to all members of a social sector. He urged the State party to give high priority to rectification of the attitudes reflected in the judgement cited.

58. Ms. ZOU Deci, noting with pleasure that the Minister of Justice of Peru, the head of the delegation, was a woman, said that the report referred to a large number of legal texts but failed to provide sufficient information on their practical implementation.

59. Observing that indigenous populations, ethnic minorities and blacks accounted for half the population of Peru, she asked to what extent they were represented in the country's legislature, the various branches of the administration and law enforcement bodies.

60. Although Peruvian legislation concerning education explicitly prohibited all forms of racial discrimination, there was still a high illiteracy rate and she would welcome information on government action to address the problem. Did children of indigenous people in rural areas have access to primary schools?

61. The report made no reference in its coverage of article 7 of the Convention to the training of law enforcement officers. She welcomed the information in paragraph 62 to the effect that members of the security forces who had violated human rights had been punished and in some cases received prison sentences, but pointed out that it was crucial to increase awareness among military personnel of the importance of protecting human rights. What measures had been taken in that regard?

62. Blacks in Peru belonged to the poorest and most vulnerable sector of the urban population. She would appreciate information about the employment situation of blacks and measures to improve their quality of life and access to education.

63. Ms. McDOUGALL said she understood that blacks in Peru were marginalized in economic, political and social life. They were allegedly denied leadership positions in government, business and the military and suffered widespread discrimination in employment. Both the navy and the air force reportedly applied an unstated and unofficial policy of excluding blacks from officer ranks. Job advertisements in newspapers apparently used coded wording to circumvent the law and make it clear that no blacks should apply. The media routinely portrayed Afro-Peruvians as individuals of questionable character. How did Peru plan to change the status and image of Afro-Peruvians? Were any special measures or affirmative action programmes contemplated?

64. Mrs. SADIQ ALI referred to reports of NGO protests against Act No. of 15 June 1995 which had granted a general amnesty to civilians and poli and military personnel for acts committed between May 1980 and the date o promulgation of the Act. What were the motives for granting total impuni parties guilty of human rights violations?

65. An official alphabet for the Quechua language had been developed in 1997. Quechua and Aymara were recognized in the 1994 Constitution as official languages in areas where they predominated. What progress had b made in introducing Quechua into school curricula? Were there sufficient textbooks and qualified teachers?

66. Mr. NOBEL asked how the Ombudsman was selected and appointed and wh he enjoyed full parliamentary immunity. Was he empowered to take action against military personnel and police officers in cases of abuse or were answerable only to their own supervisory bodies? Could he prosecute or institute legal proceedings? Did the Ombudsman publish regular reports a was there any information regarding the number of complaints received by Office? In what percentage of cases, particularly those relating to ethn minorities and indigenous peoples, had he successfully intervened on beha the complainants? Had he taken steps to promote ILO Convention No. 169?

67. According to paragraph 30 (f) of the report, an arrested person mus placed at the disposal of the competent court within 24 hours, but in cas terrorism, espionage and drug trafficking, pre-trial detention could be extended for up to 15 calendar days. Were the police exclusively respons for determining that, for example, a person was a terrorist suspect and c therefore be held for a longer period?

68. Mr. van BOVEN, referring to article 5 (b) of the Convention, said t the right to security of person and protection by the State against viole and bodily harm continued to be the issue causing greatest concern in Per Indigenous peoples had been disproportionately victimized, inter alia in context of forced disappearances. Welcoming the action taken against sol and paramilitary groups, he asked whether the 1995 amnesty laws, particul Act No. 26479 and Act No. 26492, were still in force. If so, they consti a major impediment to the administration of justice.

69. With regard to the land rights of indigenous communities, he was concerned about the alleged issuing of concessions to oil companies witho reference to the safeguards provided for in ILO Convention No. 169. Indigenous peoples should be consulted under such circumstances and invol in decisions affecting them. In that connection, he drew attention to th Committee's General Recommendation XXIII. Had any legislation been enact for the implementation of ILO Convention No. 169?

70. What measures had been taken to implement article 5 (f) of the Convention concerning access to public places?

71. Referring to article 5 (e) (iv) of the Convention, he welcomed the Government's family planning programmes but inquired about allegations of

surgical contraception, amounting to forced sterilization, particularly among poor women in Andean communities. To what extent were women who took part in such programmes informed of the consequences?

72. He was somewhat puzzled by the references in paragraphs 61 and 63 to the annual report of the Inter-American Court of Human Rights and asked the delegation to clarify their import.

73. Mr. YUTZIS said that Peru had suffered greatly in recent decades in social and economic terms. Marginalization, exclusion and a high rate of emigration had been exacerbated by inappropriate and harmful political methods and procedures whose consequences were well-known. However, those problems were currently being addressed and conditions were improving.

74. Land was a vital component of cultural identity, especially in the case of indigenous peoples. Paragraphs 8 to 12 and 32 of the report indicated that the Peruvian authorities were taking well-intentioned action in that regard. However, NGO reports indicated that existing legislation, instead of reinforcing the principle of indigenous ownership of land, restricted the opportunities available to the indigenous population. He would welcome confirmation, in the form of information on legislative enactments and statistics on titles to land, that the principle of indigenous land ownership was being reinforced.

75. He was surprised at the lack of information in the report on the highly vulnerable black community and urged the State party to rectify the omission.

76. According to FIDH, although the Constitution recognized ethnic and cultural identity as a fundamental human right, in practice persons without indigenous family names were denied such rights even when they lived in an indigenous community. For example, the Ministry of Agriculture did not recognize them as indigenous in its population statistics. He stressed the importance of recognizing individuals' subjective definition of their ethnic and cultural identity.

77. Ms. VALENZUELA DE PUELLES (Peru) said that her delegation was impressed by the Committee's analysis of the situation in Peru and grateful for the wisdom and expertise that was being placed at the disposal of her country's authorities.

78. As a prelude to the delegation's response to the Committee's questions, she reviewed the historical background to the existing ethnic composition of the Peruvian population. Peru was composed of three geographic regions: the Andean highlands, the tropical rain forests of the Amazon river basin and the coast. Peruvian history was the history of a multiplicity of ethnic groups with diverse cultures. The Quechua were the predominant group but a great deal of interbreeding had occurred, initially among indigenous groups and later with the Spanish Conquistadores, blacks from Africa, Asians and other Europeans. Today virtually every Peruvian was of mixed blood and there was no longer a racial problem. Instead, there was a problem of economic underdevelopment in certain sectors of the population.

The meeting rose at 6.15 p.m.